IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION LODGING NO.1259 OF 2006

Mahavir Prasad Sharma ...Petitioner

Vs.

1.Union of India & Anr.....Respondents

Mr.Shailesh Shah with Mr. A.M. Rajabally for
petitioner

Mr.Suresh Kumar for Respondent Nos. 1 to 3.

CORAM: **F.I. REBELLO &**

MRS.V.K.TAHILRAMANI, JJ.

DATE: 7TH JUNE,2006

P.C.

. The petitioner has moved this Court against the notice dated 5th May, 2006 whereby the Respondents have called upon the petitioner to give their consent for modifying the existing lease rate or otherwise as per para.19 of the Agreement have issued notice to terminate the lease agreement. This notice was based on the decision of the Railway Board for revised conditions for leasing of VPUs Scheme in

terms of the lease scheme. As per new scheme chargeable distance would be minimum 500 Kms. in each direction which is different from the agreement entered into with the petitioner. At the hearing of this petition on behalf of the petitioner learned Counsel submits (1) that the decision of the Railway Board is not applicable to the existing contract and (2) though there is a power under Clause 19of the contract to terminate the agreement that could only be done if no reasons are given. In the instant case reasons have been given and consequently clause 19 is not attracted. Once that be the case the question of attracting clause 26 which is arbitration clause will not arise and this Court in the circumstances of the case should invoke its extra ordinary jurisdiction.

2. On the other hand on behalf of respondents learned Counsel has drawn our attention to Clause 18 as also placed reliance on the judgment of Apex Court in the case of **State of U.P. vs. Bridge and Roof Co. (India) Ltd. AIR 1996 SC 3515,**in the judgment of Apex Court in **National High Way Authority of India vs. M/s.Ganga Enterprises and Anr. AIR 2003 SC 3823,** the judgment of the Apex Court in **Kerala State Electricity Board&Anr. vs. Kurien E. Kalathil & Ors. AIR 200 SC 2573** and the judgment of this Court in **Oil &Natural Gas Corporation Ltd. vs. Streamline Shipping Co. Pvt. Ltd. AIR 2002 Bom.420.**

3. We have heard learned Counsel. The first question that will arise is whether this Court should invoke its extra ordinary jurisdiction. That would necessitating answering the contention as urged on behalf of the petitioner that this is not a case where Clause 19 of the contract has been invoked by the respondents herein. A perusal of the communication of 5th May, 2006 para.1 would indicate that the Railway Board has taken a policy decision. Pursuant to the policy decision the petitioner was called upon as to whether he is agreeable to modify the existing lease rates. The petitioner was also informed that in the event he was not interested to modify the existing rate then the respondents propose to invoke Clause 19. Can this be said to be a reason given under Clause 19. In our opinion Clause 19 consists of two parts. The first part is the power in the parties to terminate the contract by giving one month's notice. We are not concerned with the second part which is termination on breach of contract. Merely because the Railways intimated to the petitioner that they are willing to continue the contract if the petitioner agrees with the conditions imposed by the Railways that does not mean that the reason given under clause 19. It was intimated to the petitioner that the respondent propose to terminate the contract, but yet they are willing to consider continuation if the revised rates are applicable to the petitioner. It is also clear that

the respondents stand is that the Circular does not apply to existing contract and the circular of the Railway Board has not been applied. In our opinion, therefore, it is clear that this cannot be said to be a reason for termination. Even otherwise once there is a power to terminate the contract merely because something was said cannot take away the power in the respondent to terminate the contract. If the petitioner has a grievance then that grievance can be remedied by invoking clause 26 of the lease deed, which is the arbitration clause.

4. Considering that the petitioner has a remedy at law in terms of the contract itself, in our opinion this would not be a fit case where we should invoke our extraordinary jurisdiction.Hence petition rejected.

5. It is made clear that we have not decided the matter on merits. It is open to the Competent Authority to decide the same on merits.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI, J).**